
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

TAYLOR HARPER,
Plaintiff,

v.

MICHAEL TVETER,
Defendant.

MEMORANDUM DECISION AND
ORDER DENYING PLAINTIFF’S RULE
43 MOTION TO PERMIT TAKING OF
TESTIMONY VIA TELEPHONE

Case No. 2:13-CV-889 TS

District Judge Ted Stewart

This matter is before the Court on Plaintiff’s Rule 43 Motion to Permit Taking of Testimony Via Telephone. In his Motion, Plaintiff seeks to allow the testimony of Christopher “Buck” Dominick, a previously undisclosed rebuttal witness, to be taken via telephone.

Mr. Dominick was not disclosed under Rule 26, was not named in the Pretrial Order, and not listed on Plaintiff’s witness list.¹ Moreover, his testimony has little relevance to the issues in this case and what relevance it does have is substantially outweighed by the prejudicial effect to Defendant were the Court to allow Mr. Dominick to testify. Therefore, the Court will deny Plaintiff’s Motion and will not permit Plaintiff to call Mr. Dominick as a witness, telephonically or otherwise.

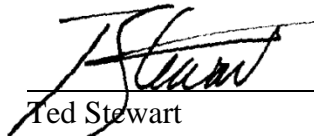
¹ Disclosure of Mr. Dominick may not be required under Fed. R. Civ. P. 26(a)(3)(A) to the extent that his testimony is sought “solely for impeachment” of Dr. Hamernik. However, because Mr. Hamernik has not yet testified, the Court cannot conclude that Mr. Dominick’s proposed testimony is “solely for impeachment.”

It is therefore

ORDERED that Plaintiff's Rule 43 Motion to Permit Taking of Testimony Via Telephone (Docket No. 136) is DENIED.

DATED this 2nd day of September, 2015.

BY THE COURT:



Ted Stewart
United States District Judge